

1 SEAN K. KENNEDY (No. 145632)
Federal Public Defender
2 (E-mail: Sean_Kennedy@fd.org)
Neha A. Mehta (No. 245191)
3 Deputy Federal Public Defender
(E-mail: Neha_Mehta@fd.org)
4 321 East 2nd Street
Los Angeles, California 90012-4202
5 Telephone (213) 894-4104
6 Facsimile (213) 894-0081

7 Attorneys for Defendant
SHAWN EWING

8
9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA
11 WESTERN DIVISION
12

13 UNITED STATES OF AMERICA,

14 Plaintiff,

15 v.

16 SHAWN EWING,

17 Defendant.
18
19

NO. CR 09-00003-FMC

NOTICE OF MOTION; MOTION
TO SUPPRESS EVIDENCE;
MEMORANDUM OF POINTS
AND AUTHORITIES;
DECLARATIONS; EXHIBITS

Date: 9/14/09
Time 1:30 p.m.

20
21 TO: UNITED STATES ATTORNEY THOMAS O'BRIEN AND ASSISTANT
22 UNITED STATES ATTORNEY XOCHITL ARTEAGA:

23 PLEASE TAKE NOTICE that on September 14, 2009 at 1:30 p.m., or as soon as
24 counsel may be heard, in the courtroom of the Honorable Florence-Marie Cooper,
25 United States District Judge, defendant Shawn Ewing, will bring on for hearing the
26 following motion:

27 //

28 //

MOTION

Defendant, Shawn Lewis Ewing, by and through his attorney of record, Deputy Federal Public Defender, Neha A. Mehta, hereby moves this Honorable Court to suppress all evidence found, seized and/or developed as a result of a December 18, 2008 warrantless search of several twenty dollar bills located in a vehicle.

This motion is made pursuant to the Fourth Amendment to the United States Constitution and is based upon the attached Memorandum of Points and Authorities, Declaration of Shawn Lewis Ewing, all files and records in this case, and any further evidence as may be adduced at the hearing on this motion.

Respectfully submitted,

SEAN K. KENNEDY
Federal Public Defender

DATED: August 6, 2009

By _____/s/_____

Neha A. Mehta
Deputy Federal Public Defender

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**

3 **PRELIMINARY STATEMENT**

4 Defendant, Shawn Lewis Ewing (“Mr. Ewing”), is charged in a two-count
5 indictment with the following: (1) Count One -- a violation of 18 U.S.C. § 471,
6 Counterfeiting Obligations of the United States; and (2) Count Two -- a violation of 18
7 U.S.C. § 474, Possessing Counterfeit Currency of the United States with Intent to Use.

8 On December 18, 2008, Los Angeles County Sheriff, Deputy J. Doke (“Deputy
9 Doke”), conducted a traffic stop of a vehicle belonging to Sandra Vera for having expired
10 license plates. Mr. Ewing was a passenger in the car, as was another man named Michael
11 Smith (“Mr. Smith”). At some point during the traffic stop, Deputy Doke conducted a
12 search of a number of twenty dollar bills contained in the car. This was a search which was
13 unlawful and therefore the bills and all other evidence resulting from the search must be
14 suppressed.

15 **II.**

16 **STATEMENT OF FACTS**

17 According to the Los Angeles Sheriff’s Department Incident Report, on
18 December 18, 2008, Deputy Doke conducted a traffic stop of a 1993 brown Buick that
19 had an expired license plate.¹ Deputy Doke approached the vehicle and informed the
20 driver, Sandra Vera, that he had stopped her because her registration was expired.
21 Deputy Doke claimed that one of the passengers, Mr. Smith, appeared nervous. Deputy
22 Doke then asked whether anyone in the car was on probation or parole. Mr. Smith
23 informed that he was. Deputy Doke noticed dollar bills sticking out of the
24 weatherstripping of the front passenger window. Deputy Doke proceeded to remove the
25 dollar bills from the weatherstripping and questioned Mr. Smith as to why there was
26 money in the window. Mr. Smith informed Deputy Doke that he didn’t know.

27
28

¹ This report is attached to this Motion as Exhibit “A.”

1 Deputy Doke then began examining and comparing the bills and observed that
 2 several of the bills had the same serial numbers. Mr. Smith later informed Deputy Doke
 3 that the twenty dollar bills belonged to Mr. Ewing. This fact is undisputed. (See
 4 Declaration of Shawn Lewis Ewing ¶ 3).

5 III.

6 ARGUMENT

7 A. Applicable Law

8 The Fourth Amendment protects against unreasonable search and seizure and
 9 provides that search warrants should issue only upon probable cause. Payton v. New
 10 York, 445 U.S. 573, 582, 100 S. Ct. 1371, 1378 (1980). Warrantless searches are *per se*
 11 unreasonable under the Fourth Amendment unless justified by “a few specifically
 12 established and well delineated exceptions.” Katz v. United States, 389 U.S. 347, 357,
 13 88 S. Ct. 507, 19 L. Ed.2d 576 (1976). Exceptions to the warrant requirement “must be
 14 narrowly tailored to the circumstances that justify their creation.” Florida v. Royer, 460
 15 U.S. 491, 499-500, 103 S. Ct. 1319, 1325 (1983); Chimel v. California, 395 U.S. 752,
 16 762-63, 89 S.Ct. 2034, 2040 (1969); Terry v. Ohio, 392 U.S. 1, 19, 25-26, 88 S. Ct.
 17 1868, 1878-79, 1882 (1968).

18 Motor vehicles have occupied a special place in search and seizure law in that an
 19 exception to the warrant requirement has been established in regard to stopping and
 20 securing a vehicle. Chambers v. Maroney, 399 U.S. 42, 51, 90 S.Ct. 1975, 1981 (1970);
 21 Carroll v. United States, 267 U.S. 132, 45 S. Ct. 280 (1925). The warrant exception has
 22 developed because of the mobility inherent in a motor vehicle. It has not, however,
 23 stripped motor vehicles of all Fourth Amendment protection. Regardless of whether an
 24 a house or motor vehicle is searched, there still must be probable cause for the search.
 25 Almeida-Sanchez v. United States, 413 U.S. 266, 269, 93 S.Ct. 2535, 2537-2538
 26 (1973).

27 Where there is a stop for a traffic violation, the “traffic stop may not last ‘any
 28 longer than necessary to process the traffic violation unless there is articulable suspicion

1 of other illegal activity.’” United States v. Purcell, 236 F.3d 1274, 1277 (11th Cir.
 2 2001)(quoting United States v. Holloman, 113 F.3d 192, 196 (11th Cir. 1997). A traffic
 3 stop alone does not necessarily permit the search of a vehicle. See Knowles v.
 4 Iowa, 525 U.S. 113, 119 S.Ct. 484, 142 L.Ed.2d 492 (1998); see also United States v.
 5 Turvin, 517 F.3d 1097, 1103-04 (9th Cir. 2008)(finding that a court must examine the
 6 totality of the circumstances surrounding a stop in order to determine whether the
 7 officer’s conduct was reasonable and in violation of a defendant’s Fourth Amendment
 8 right to be free from unreasonable seizure).

9 **B. The Removal and Comparison of the Twenty Dollar Bills was a Search**
 10 **Which was Subject to the Fourth Amendment**

11 In Arizona v. Hicks, 480 U.S. 321 (1987), the Supreme Court held that while
 12 police lawfully entered an apartment without a warrant and seized evidence in plain
 13 view that was associated with the crime they were investigating, a policeman’s conduct
 14 in moving stereo components in order to obtain their serial numbers for the purpose of
 15 checking whether the components were stolen, constituted an unlawful search. Id. at
 16 324-27. According to the Supreme Court, moving an object even a few inches
 17 constituted a search. Id. at 324 (stating, “Officer Nelson’s moving of the
 18 equipment...did constitute a ‘search’ separate and apart from the search...that was the
 19 lawful objective of his entry into the apartment.”) Unlike evidence lawfully seized, the
 20 contraband nature of the stereo component was not immediately apparent to the officer,
 21 and he lacked probable cause to believe the components were stolen. Id. Therefore, the
 22 search violated the Fourth Amendment. See also United States v. Ruthowski, 877 F.2d
 23 139, 142-44 (1st Cir. 1989)(seized platinum neither inherently incriminating, nor was
 24 there a discernable nexus between the seized items and criminal activity described in
 25 the warrant.); United States v. Davis, 332 F.3d 1163, 1168 n.3 (9th Cir. 2003)(“[E]ven
 26 if the bag [containing a prohibited shotgun] had been open, the fact that it was stored
 27 under the bed, thus requiring the police to move it, would have required probable cause,
 28

1 since such movement would constitute a search.”(citing Hicks, 480 U.S. at 324-25, 107
2 S. Ct. 1149)).

3 The facts here in are comparable to those in Arizona v. Hicks. Just as the officer
4 moved of the stereo equipment in Hicks to see the serial numbers, Deputy Doke
5 removed the twenty dollar bills in order to see the serial numbers, which constituted an
6 unlawful search. And as in Hicks, the contraband nature of the bills was not
7 immediately apparent to the officer, rather it became apparent only when he compared
8 the serial numbers.

9 **C. The Government has the Burden of Justifying the Search, and the**
10 **Search Must be Held Unconstitutional if the Government Cannot**
11 **Justify It**

12 The Fourth Amendment incorporates a strong preference for search warrants.
13 United States v. Ventresca, 380 U.S. 102, 106 (1965). Warrantless searches are *per se*
14 unreasonable. Katz v. United States, 389 U.S. 347, 357 (1967). “While warrantless
15 searches are not absolutely proscribed, the exceptions to the warrant requirement are
16 ‘jealously and carefully drawn.’” United States v. Carbajal, 956 F.2d 924, 930 (9th Cir.
17 1992) (quoting Jones v. United States, 357 U.S. 493, 499 (1958)). There must be
18 probable cause to conduct the search, though there are some exceptions to the probable
19 cause requirement. See, e.g., Florida v. Royer, U.S. 491, 497 (1983) (plurality).

20 The government bears the burden of demonstrating the reasonableness of a
21 warrantless search, including establishing that a warrantless search comes within one of
22 the narrow exceptions to the warrant requirement. Carbajal, 956 F.2d at 930 (citing
23 United States v. Jeffers, 342 U.S. 48, 51 (1951)). The government must demonstrate
24 that there was probable cause or that the requirements for one of the exceptions to the
25 probable cause requirement were satisfied.

26 In the present case, government must decide what, if any, justifications it will
27 rely on, and, since it has the burden, it must offer evidence and argument in support of
28

